IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION - FOR TRANSFER No. 1222 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JIGNABEN JIGNESHBHAI CHAUDHARY - Applicant(s)

Versus

JIGNESHBHAI RAMESHWARBHAI CHAUDHARY - Opponent(s)

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Appearance :
MR PRAVIN GONDALIYA for Applicant(s) : 1,
NOTICE SERVED for Opponent(s) : 1,
MR MM TIRMIZI for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 05/09/2006

ORAL JUDGMENT

1 Rule. Mr.M.M.Tirmizi waives service of Rule on behalf of the respondent. Upon request of the learned Advocates appearing on behalf of the respective parties the matter is taken up for final hearing.

2 This Application has been moved under Section 24 of the Code of Civil Procedure for transfer of Guardian Application No. 4 of 2006 filed before Joint District Judge, Vyara. The petitioner herein is the original respondent in Guardian Application No. 4 of 2006 while the respondent herein is the original applicant of Guardian Application No.4 of 2006.

3 It is an accepted fact that the petitioner is wife of the respondent. That the couple has two children born out of the wedlock. The said children are at present in custody of respondent-father by virtue of order dated 10.4.2006 made below Application Exhibit 5 by the Court of Additional Sessions Judge, Vyara.

4 The case of the petitioner is that she being the natural mother of the two minor children the custody of the children should be her's in normal circumstances but as she was falsely implicated in criminal proceedings the respondent-father has taken away the

custody of minor childeren and now the respondent is residing with his parents at Vyara, District Surat. That the petitioner has since been acquitted in Sessions Case No. 144 of 2005 by virtue of judgment dated 23.08.2006 and therefore the reason for which the application had been filed by respondent-father seeking custody of the minor children does not survive. It is further stated that the petitioner is a lady. She has filed an application for maintenance under section 125 of the Code of Criminal Procedure before the Competent Court at Rajkot and hence considering the balance of convenience between the respondent who is male and the petitioner lady application for transfer be granted.

5 As against that the case of the respondent-husband presented by the learned Advocate appearing on behalf of the respondent in nutshell is that the respondent is an agriculturist carrying on agricultural operations at Vyara, the two minor children are admitted in a School and in these circumstances it would cause hardship if the guardian application is transferred from Vyara Court to a Court at Rajkot entailing the respondent to travel every time from Vyara to Rajkot along with two minor children. The learned Advocate has placed reliance on the following four decisions of the Apex Court :

(1) Priyanka Batra Vs. Manish Batra.
(2005) 12 SCC 236.

(2) Mira Bhagat Vs. Arabinda Bhagat.
(2005) 12 SCC 386.

(3) Sonu Vs. Prakash.

(2000) 9 SCC 127.

(4) *Teena Chhabra Vs. Manish Chhabra.*
(2004) 13 SCC 411.

It is submitted that the petitioner shall be compensated with the expenses that the petitioner may have to incur for appearing in Vyara Court. Alternatively, it was submitted that in the event the application for transfer moved by the petitioner is to be granted, a direction may be issued to the Trial Court to peremptorily fix the guardian application and dispose of the same after conducting the same on a day-to-day basis.

6 Having heard the learned Advocates for the parties at length it is apparent that both the sides can claim to justifiably make a grievance regarding the inconvenience and hardship that a person has to undergo to attend Court proceedings at a place other than where one resides. Therefore, in so far as the petitioner and the respondent are concerned, on their own there is no difference whether one or the other side is asked to travel from Rajkot to Vyara or Vyara to Rajkot. However, when one considers the attendant circumstances the balance tilts in favour of the respondent husband considering the fact that if he is asked to travel from Vyara to Rajkot in so far as these proceedings are concerned it might necessitate, if not every time, once in a while to take minor children from Vyara to Rajkot for attending Court proceedings. The Court is aware that the petitioner has also moved an application for search warrant under Section 97 of the Code of Criminal Procedure against the respondent husband and his

parents. This application has been moved before the Competent Court at Rajkot and the same is pending. However, the pendency of the said proceedings need not necessarily mean that this application should be granted.

7 As already stated hereinbefore, considering the fact that it would be more convenient if the guardian application is conducted at Vyara Court, considering the interest of the minor children the present application is rejected subject to the following conditions:

> (1) The respondent husband shall deposit with the Trial Court at Vyara a reasonable sum towards travelling expenses and incidental expenses for the petitioner wife along with one companion who shall accompany the lady to attend the Court proceedings.
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> (2) In the first instance an amount of Rs.5,000/- shall be deposited on an ad-hoc basis before the Trial Court and the Trial Court shall permit the petitioner wife to withdraw a reasonable sum as aforesaid out of the said deposit every time the petitioner wife appears before the Court.
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> (3) The amount shall be deposited before the Trial Court within a week from today. Upon such amount being deposited the stay operating against proceedings of Guardian Application No.4 of 2006

shall stand vacated and it will be open to the Trial Court to proceed with hearing of the application.

(4) On the amount being withdrawn by the petitioner wife as may be fixed by the Trial Court, it will be open to the Trial Court to order deposit of further amount, as may be necessary, for every subsequent appearance till the matter is finally disposed of.

8 The petition stands rejected accordingly. Rule discharged. There shall be no order as to costs. Interim relief stands vacated.

Sd/-
(D.A.Mehta, J.)

m.m.bhatt